HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No.18820 of 2003

ORDER

Date: 14-08-2007

Between :

Arsha Vijnana Trust, Hyderabad,
Rep. by its Secretary.

……Petitioner

And

Sri D.P.Sharma, I.R.S., Director of Income-Tax (Exemptions),
Hyderabad & others.

……Respondents.

For the petitioner : Sri S.Ravi, Advocate.
For the Respondents : Sri S.R.Ashok.

< Gist:

> Head Note:

? CITATIONS:

1. 227 ITR 578
2. 213 ITR 733
3. 232 ITR 11
4. 273 ITR 475
5. 227 ITR 578

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WRIT PETITION No.18820 of 2003

ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

The writ petition has been filed by a Trust through its Secretary, questioning the order of respondent No.1 dated 31st of January 2003, refusing to renew the exemption granted under Section 80-G(5)(iii) of the Income Tax Act, 1961 (for short 'the Act'). According to the petitioner, the Trust is registered under Indian Trusts Act with the following objects—

> "(i). To publish the books that are the foundation for "Arsha Vijnanam" in particular Ramayanam, Mahabharatham, Bhagavatham and other Maha Kavyas.
>
> (ii) To publish the original texts of all Vedas, Vedangas, Upangas and leading Darshanas,

Ithihasaas, and other works on Indian philosophy, lectures, art and all works on Indian culture.

(iii) To promote and propagate the "Arsha Vijnanam" among the citizens of India in such manner as the trustees may in their absolute discretion think fit.

(iv) To conduct lectures, satsangas, classes/seminars, symposia, etc., to disseminate and spread the "Arsha Vijnanam" and to honour scholars and persons who distinguished themselves in interpreting and spreading "Arsha Vijnanam".

(v) To do all that is necessary for and conducive to the attainment of the objects for which this Public Charitable Trust was created."

The Trust was founded by Sri Justice P.Kodanda Ramayya in 1983. From the date of its constitution, the Trust has published various books mostly in Telugu and English. These books include the translations of Sanskrit *Ramayana*, *Maha Bharata* and *Darshanas*. The Trust also published *Brahma Sutra Bhashyam*, *Bhagawadhgita* with *Sankara Bhashyam*. The petitioner has annexed a list of its publications with the writ petition. A book titled *"Light of Ramayana"* in English, authored by its founding Chairman, was also published. The Trust was given benefit under Section 80-G of the Act from its establishment without interruption till a notice was given by respondent No.1 on 17th January 2003. Earlier to it, another notice had been given on 30th of June 1999 in the light of the judgment of the Supreme Court in **Upper Ganges Sugar Mills Ltd. V. Commissioner of Income-**

Tax[1] and those proceedings were dropped. It is contended by the petitioner that after the notice was given in 1999 and proceedings were dropped, there was no cause of action for issuing notice on 17th of January 2003. However, in response to the notice, the petitioner filed two notes, one on 28.01.2003 and another on 31.01.2003, explaining how the Trust was not wholly and substantially religious institution. On 28.01.2003, the respondent No.1 had also a discussion with the petitioner and an Auditor of the Trust. The 1st respondent, however, passed an order on 31st of January 2003, holding that the Trust had contravened the provisions of Section 80-G(5)(iii) of the Act and accordingly the request for renewal of exemption was not acceded to. The application for renewal had been filed on 2nd August 2002, for which, a notice was issued for enquiry on 17th of January 2003. The final order passed on 31st January 2003 was received by the Trust on 18th of February 2003.

It is contended further in the writ petition that respondent No.1 had made some personal remarks against the Founder Chairman of the Trust and also the author of the book *"Light of Ramayana"*. He had made denigrating remarks against the Epics and their value. The Founder Chairman sent a personal letter to the Chairman, Central Board of Direct Taxes stating that he was not a party to the proceedings and remarks made by

the officer were unwarranted and the remarks made against him should be deleted. The Trust also made a similar representation to the Central Board of Direct Taxes. The action of respondent No.1 in passing impugned order is challenged mainly on the grounds –

(1) that since the exemption was granted under Section 80-G of the Act for a period of 20 years, the respondent No.1 could have not reopened the question;

(2) that the officer, having held that Epics *Ramayana* and *Mahabharata* enunciated values which were universal and could not be taken as only Hindu religious values. Since the concept expounded in these Epics was of universal value, it transcended all religions.

(3) the Epics were not myths, but embodied the concept of history. The heroes of the Epics *Srirama* and *Yudhisthira* are acclaimed and adored by people as '*Vigrahavan Dharma*'. They were personification of '*dharma'* and '*punya sloka'*. The authority had no jurisdiction to go into the merits and the message of these Epics and denigrate

the heroes of these Epics.

(4) the officer had no concern and business to review the work of Founder Chairman of the Trust Justice P.Kodanda Ramayya.

(5) the Officer had not examined the matter within the parameters of Section 80-G(5)(iii) of the Act.

(6) the finding of respondent No.1 that the Trust was meant for upholding propagation of Hindu religion was not correct. The object of the Trust is to propagate the knowledge of *Arsha Dharma*.

(7) the officer failed to make a distinction between the cultural part of the Trust and religious part of it. Even religious Epics have cultural part and also literary part. Hence, publication of religious books like *Ramayana* and *Maha Bharata* cannot be termed as religious.

Counter has been filed and we have heard learned counsel for the parties at length.

It is contended by respondent No.1 that by no imagination, the publications made by the petitioner can be termed as 'non-religious books'. Ramayana,

Mahabharatha and Bhagwadhgita deal with Hindu Gods and Goddesses and their preachings. Lord Rama and Lord Krishna, who are epicentres in Ramayana and Mahabharatha, are said to be the incarnation of Lord Vishnu according to the Hindu religion and philosophy. It is further contended that Bhagavatham deals with Hindu Gods and Goddesses and cannot be divested of Hindu religion and its philosophy. It is submitted that merely because of a person who is portrayed as hero in the book Ramayana, the book does not ceases to be a religious book. All religions preach *Dharma*, therefore, the 1st respondent was perfectly justified in proceeding on the assumption that the object of the petitioner-Trust was religious in nature.

There is no dispute about the books that are being published by the Trust. The objects of the Trust have been mentioned by the petitioner in the writ petition itself and we have referred to them hereinabove. One of the objects is to publish original texts of all Vedas, Vedangas, Upangas and leading Darshanas, Ithihasaas, and other works on Indian philosophy, lectures, art and all works on Indian culture. Another object is to conduct lectures, satsangas, classes/seminars, symposia, etc., to disseminate and spread "*Arsha Vijnanam*". If the contentions of the petitioner are accepted that publication of books like Ramayana, Mahabharatha and Bhagavatham are not religious, then publication of any

sacred book cannot be termed to be religious. All religions preach *Dharma* and if the interpretations placed by the petitioner on the sacred books is accepted, then all religions can claim to have cultural, historical and literary parts in their books. Section 80-G of the Act deals with deductions in respect of donations to certain funds, charitable institutions, etc.

Section 80-G(5)(ii) lays down—

> *"the instrument under which the institution or fund is constituted does not, or the rules governing the institution or fund do not, contain any provision for the transfer or application at any time of the whole or any part of the income or assets of the institution or fund for any purpose other than a charitable purpose."*

Section 80-G (5)(iii) lays down—

> *"the institution or fund is not expressed to be for the benefit of any particular religious community or caste;"*

Explanation 3 to Section 80-G reads as under—

> *"In this section, "charitable purpose" does not include any purpose the whole or substantially the whole of which is of a religious nature."*

Now, all donations made to charitable institutions are entitled to deductions in accordance with Section 80-G, except certain exceptions, one of the exceptions being 80-G(5)(iii), which has been quoted hereinabove. This

provision of law has received the attention of the Apex Court and other High Courts in various cases.

The Madras High Court, in **Reliance Motor Co. Pvt. Ltd. V. Commissioner of Income-tax**[2]**,** held that in order to get benefit under Section 80-G of the Act, one has to satisfy sub-section (5). It further held,

> *"Clauses (ii) and (iii) of section 80G(5) of the Income-tax Act, 1961, clearly provide that the trust to which the donation is made should be purely a charitable trust and no part of its income should be capable of being transferred or applied for any purpose other than a charitable purpose. It is specifically provided that the institution or funds should not be expressed to be for the benefit of any particular religious community or caste."……"in the instant case, the name of the trust itself indicated that it belonged to a particular religious community. The object of the trust included not only charitable purposes but also religious purposes like renovating old Hindu temples or establishing and maintaining Pasumadam and Nandavanam for the use of Hindu temples. These would, therefore, sufficiently indicate that sub-section (5) of the provision would not apply to the trust in question. In such a situation, the benefit of Section 80-G of the Income-tax Act, 1961, would not be available to the assessee."*

The Delhi High Court in **Kirti Chand Tarawati Charitable Trust v. Director of Income-tax**[3] found that

though the purposes for which the Trust was established were charitable, but it was found that a temple was being constructed with the funds of the Trust and construction of a religious temple was not one of the mentioned objects of the Trust. The Court held—

> "For the purpose of construing the purpose of a trust, one need not remain necessarily confined to the objects of the trust as set out in the deed of declaration. The real purpose of establishment of a trust has to be found out and spelled out. "Purpose" means that which one sets before him to accomplish or attend, an intention or aim, object, plan, project ; the term is synonymous with the ends sought and an object to attain, an intention, etc. Purpose must obviously be construed as real purpose and not a purpose as it outwardly appears to be. Any other interpretation would permit a fraud being played on the law permitting exemption from taxation. If the argument of learned counsel for the petitioner were to be accepted then a trust may be established with a purpose as set out in the deed of declaration which appears to be highly charitable but the trust may in fact be engaged in such activities which cannot even remotedly be called charitable, and yet the donations made to the trust would enjoy exemption."

To the same effect, there is a judgment of the Rajasthan High Court in **Sri Marudhar Kesari Sthanakwasi Jain Yadgar Samiti Trust v. Union of India**[4].

The learned counsel for petitioner has, however, placed reliance on a judgment of Supreme Court in **Upper Ganges Sugar Mills Ltd. V. Commissioner of Income-**

tax[5], which has also been quoted by the respondents. In this case, a Trust was created and the objects of the Trust were mentioned in Clause (2) of the Trust Deed. It had almost a dozen of objects, which, except for one, were apparently secular. But one of the objects was, *"to establish, maintain and to grant and/or aid to public places of worship and prayer halls."* The Delhi High Court did not accept the assessee's contention that the establishment and maintenance of prayer halls was not a religious object. It took the view that even if the Trust had set up this objective for the advancement of all the religions in the world, still, it would be a Trust of a religious nature, and the High Court rejected the assessee's argument that the Trust was not set up wholly or substantially for a religious purpose, as one of the purposes was to establish, maintain and grant aid to public places of worship and prayer halls, which included all religions. The Supreme Court upheld the view of the Delhi High Court and held,

> *"To reiterate, Explaantion 3 does not require the ascertainment of whether the whole or substantially the whole of the institution or fund's charitable purpose is of a religious nature. If it did, it would read differently. It requires the ascertainment of whether there is one purpose within the institution or fund's overall charitable purpose which is wholly, or substantially wholly, of a religious nature. There is little doubt that clause 2(h) of the trust deed which permits the trustees to support prayer halls and places of worship sets out a purpose the whole or substantially the whole of which is of a religious nature, and this has not been seriously disputed.*

Therefore, in our view, the trust and the donation by the assessee to it fall outside the scope of section 80G."

This judgment also does not favour the petitioner. Therefore, in our view, as to the question whether the exemption could be granted under Section 80-G of the Act to the petitioner Trust or not, respondent No.1 was correct. If the exemption had been granted to the petitioner for a long period of twenty years by mis-construing the law, that would not be a bar for the 1st respondent to pass an order when an application for extension of grant of exemption was made before him.

We have perused the order. The respondent No.1 has, without reasons, made comments, which he should have not made. He has been made a party in person also, but he has not filed any counter. For instance, the observations made in para 5 of the order with regard

to a book titled *"The light of Ramayana"* authored by Justice P.Kodanda Ramayya and published by the Trust, were most unfortunate. The respondent No.1 was not called upon to comment upon the book. He was called upon to decide the question whether the Trust was a religious Trust or not. If his own views were different from that of Justice P.Kodanda Ramayya with respect to the subject matter, he was not supposed to air them in an order which he was passing as a quasi-judicial authority, and in any case, it was not necessary for him to do so in deciding the matter before him. Therefore, the comments made by respondent No.1 in para 5 of his order, are set aside.

Similarly, the respondent No.1 has made not only comments on the views of Justice Kodanda Ramayya, but he has made personal comments on Justice Kodanda Ramayya, who was not even a party to the proceedings before him. For instance, at one place he says, *"Propagation of such beliefs cannot be a charitable purpose. Justice Ramayya should have known better"*. The petitioners have also contended in their writ petition

that they had approached the Central Board of Direct Taxes with regard to the comments made by the officer in his order but nothing has been stated in the counter affidavit about what has happened to that petition. All the comments made on publications and all the comments made with respect to Justice Kodanda Ramayya are hereby set aside.

Therefore, while dismissing this writ petition, we direct respondent No.2 i.e. the Central Board of Direct Taxes to initiate appropriate action against Mr.D.P.Sharma, who was the Director of Income-tax (Exemptions), Hyderabad when the impugned order was passed, for making disparaging comments about the Trust and about Justice P.Kodanda Ramayya.

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BILAL NAZKI, J

14th August 2007

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NOOTY RAMAMOHANA
RAO, J

N.B:
L.R. copies to be marked.

(b/o)
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[1] 227 ITR 578
[2] 213 ITR 733
[3] 232 ITR 11

[4] 273 ITR 475

[5] 227 ITR 578